

Response of the Public Services Ombudsman for Wales to the Commission on Justice in Wales' call for evidence

1. As Public Services Ombudsman for Wales I have two roles. Firstly, I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. Secondly, I consider complaints alleging that members of local authorities have broken their Code of Conduct.
2. I find that much of the information you request pertains to criminal and civil justice issues, areas which I do not have jurisdiction. However, I can share some information on my office's experiences of access to administrative justice.
3. A barrier to accessing the ombudsman's investigative powers is that the current legislation (s. 5(1)(a) PSOW Act 2005) requires for all complaints to be made in writing. Whilst I have discretion to accept a complaint in another form if appropriate, such as orally, this must be considered on a case by case basis. This requirement could be at odds with Equality legislation and is certainly a barrier in relation to the first of my office's values 'Equality and Fairness'. Allowing complaints only in writing is potentially excluding people who find it difficult to write, for example people with learning disabilities. In Wales, only 87% of the population attain literacy level 1 or above (compared with 94% in the UK).¹ I hope that the draft Public Services Ombudsman Bill, which will allow my office to accept oral complaints, will increase the accessibility of my services to all.
4. I find that access to advice is hampered by limitations in the number of available advocacy organisation in Wales. My office accepts complaints from members of the public once they have exhausted the complaints procedure within the organisation or body for which they are complaining. Daily, we receive calls for advice, however, my office does not have the jurisdiction to give advice and, therefore, we try to direct them to appropriate advocacy

¹ Welsh Government Social Research: National Survey of Adult Skills in Wales 2010

organisations. I find that there is a dearth of advocacy bodies able to provide advice on appropriate legal pathways for members of the public making administrative complaints.

5. To facilitate positive change in the accessibility of the Welsh justice system, I hold that smoother relationship between the Ombudsman’s office and courts could be achieved if the recommendations made by the Law Commission in their 2011 report ‘Public Services Ombudsman’ were adopted, these are:

1. The statutory bars be replaced with the discretion for the ombudsmen to take a claim if it is appropriate;
2. The Administrative Court should have an express power to “stay” an action before it, to allow a public services ombudsman to investigate or dispose of a complaint; and
3. The Ombudsman be given the power to refer a point of law to the courts.

6. These were considered by the National Assembly for Wales Finance Committee in May 2015 which recommended that these points should be explored as part of future devolution discussions.² We find that there is still merit in realising all three recommendations for the following reasons: firstly, the complainant would be given a greater choice as to the institution and procedure through which they wish to seek administrative redress. Secondly, where appropriate, cases would be redirected to the ombudsmen thus helping to ease the number of judicial review cases being processed by the justice system. Finally, the ombudsman would be able to seek clarity as to whether a matter is within jurisdiction as well as on a legal point which may otherwise impede an investigation.

Public Services Ombudsman for Wales

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² National Assembly for Wales, (May 2015) Consideration of Powers: Public Services Ombudsman for Wales. Finance Committee.